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PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

2:23-cv-00082 HZ

United States District Court		District:
Name (under which you were convicted): <u>Adam John Davis</u>		Docket or Case No.: <u>15CR57698</u>
Place of Confinement: <u>SNAKE RIVER</u>		Prisoner No.: <u>12366782</u>
Petitioner (include the name under which you were convicted) <u>Adam John Davis</u>		Respondent (authorized person having custody of petitioner) v. <u>state of OREGON</u>
The Attorney General of the State of: <u>Oregon</u>		

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

Klamath County Circuit Court

- (b) Criminal docket or case number (if you know):
- 15CR57698

2. (a) Date of the judgment of conviction (if you know):
- 8-24-16

(b) Date of sentencing: 9-13-16

3. Length of sentence:
- 130 months

4. In this case, were you convicted on more than one count or of more than one crime?
- ☐
- Yes
- ☒
- No

5. Identify all crimes of which you were convicted and sentenced in this case:
- RAPE IN THE FIRST DEGREE

6. (a) What was your plea? (Check one)

☒ (1) Not guilty ☐ (3) Nolo contendere (no contest)

☐ (2) Guilty ☐ (4) Insanity plea

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? 1st degree Rape

(c) If you went to trial, what kind of trial did you have? (Check one)

☒ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☒ Yes ☐ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: Klamath County Circuit Court

(b) Docket or case number (if you know): 15CR57698/my File No. 66413

(c) Result: upheld conviction

(d) Date of result (if you know):

(e) Citation to the case (if you know): Case No. 19CV09128 NO. 66413

(f) Grounds raised: ① Vouching, The state dismissed Count 2 while the Complainant was on the stand saying accusations that were impossible, This was close case which was prosecuted six-years after the incident was said to occurred, may a prosecutor argue that defendant's unwillingness to talk to police is evidence and proof of his guilt.

(g) Did you seek further review by a higher state court? ☒ Yes ☐ No

If yes, answer the following:

(1) Name of court: Malheur County Circuit Court

(2) Docket or case number (if you know): No. 19CV09128

(3) Result: denied

(4) Date of result (if you know):

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(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

Trial counsel failed to object to vouching, Trial counsel failed to ask for mistrial after state dismissed Count 1 because Complainant was not truthful on stand.

(h) Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes☒ No

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☐ Yes ☒ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes☐ No

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second petition, application, or motion, give the same information:

- (1) Name of court: _____
- (2) Docket or case number (if you know): _____
- (3) Date of filing (if you know): _____
- (4) Nature of the proceeding: _____
- (5) Grounds raised: _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

- (1) Name of court: _____
- (2) Docket or case number (if you know): _____
- (3) Date of filing (if you know): _____
- (4) Nature of the proceeding: _____
- (5) Grounds raised: _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☐ No

(2) Second petition: ☐ Yes ☐ No

(3) Third petition: ☐ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE:

May a prosecutor argue that defendant's unwillingness to talk to the investigating officers is evidence that his trial testimony ^{should} be disbelieved and proof of his guilt.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I invoked my right to counsel and silence during police questioning. The prosecutor said I must be guilty because I refused to talk to police.

(b) If you did not exhaust your state remedies on Ground One, explain why: _____

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(c) **Direct Appeal of Ground One:**(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No(2) If you did not raise this issue in your direct appeal, explain why: _____

_____(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Circuit CourtMalheur County

Docket or case number (if you know): _____

No. 19CV09128

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition?

☒ Yes ☐ No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Circuit CourtMalheur County

Docket or case number (if you know): _____

Date of the court's decision: _____

11-23-22Result (attach a copy of the court's opinion or order, if available): _____

_____(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

GROUND TWO:vouching

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The prosecutor elicited evidence through a multiple question exchange that the investigating officer believed that I was not being truthful when I said that I did not know the complainant. The trial court had a duty to strike the evidence because it commented directly on my credibility and the prosecutor offered the evidence to undermine my credibility.

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue? _____

☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

PCR

Name and location of the court where the motion or petition was filed: _____

Circuit CourtMalheur County

Docket or case number (if you know): _____

NO. 19CV09128

Date of the court's decision: _____

11-23-22

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition? ☒ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Malheur County Circuit Court

Docket or case number (if you know): NO. 19C V09128 / Oregon Court of Appeals NO. A1738

Date of the court's decision: 11-23-22

Result (attach a copy of the court's opinion or order, if available): Denied review

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

GROUND THREE:

Charge 2 was dismissed because of Complainant's testimony

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

While on the stand the complainant's story was untruthful and the judge stopped trial and dismissed Forceful Rape because the complainant said she was being raped from behind and she was donkey kicking me in the chest, there should have been mistrial, because that made her uncredible, and my attorney did ask for mistrial or object.

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(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

(c) **Direct Appeal of Ground Three:**(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: Malheur County
Circuit CourtDocket or case number (if you know): No. 19CV09128Date of the court's decision: 11-23-22

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition? ☒ Yes ☐ No(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Malheur County
Circuit CourtDocket or case number (if you know): No. 19CV09128

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

GROUND FOUR:

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

- (b) If you did not exhaust your state remedies on Ground Four, explain why:

- (c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

- (d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

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Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

☐ Yes☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☐ Yes ☒ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

got finished with Federal Habeas, I just
Remedies State Court

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

Mark Hendershott

(b) At arraignment and plea:

Mark Hendershott

(c) At trial:

Mark Hendershott

(d) At sentencing:

Mark Hendershott

(e) On appeal:

Laura Frikert 1175 Court Street
NE Salem, OR 97301

(f) In any post-conviction proceeding:

Travis Dickey 456 State St
#200 Salem OR 97301

(g) On appeal from any ruling against you in a post-conviction proceeding:

Harrison Latta
1631 NE Broadway #533
723

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☐ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

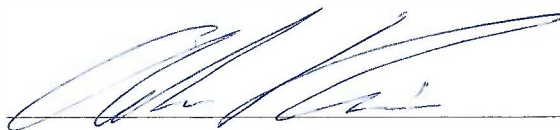
Charge dismissed

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on _____ (month, date, year).

Executed (signed) on _____ (date).



Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

AO 240 (Rev. 07/10) Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form)

4. Amount of money that I have in cash or in a checking or savings account: \$ None.

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name (*describe the property and its approximate value*):

None

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses (*describe and provide the amount of the monthly expense*):

None

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:

None

8. Any debts or financial obligations (*describe the amounts owed and to whom they are payable*):

None

Declaration: I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date:

1-17-23



Applicant's signature

Adam Davis

Printed name

8. Do you have monthly expenses, including housing, transportation, utility, judgments, loan payments, or other regular expenses? ☐ Yes (describe below) ☒ No

Expense Description	Estimated Monthly Payment

9. List the persons (or, if under 18, initials only) who are dependent on you for support:


Name or Minor's Initials	Relationship (Spouse, child, parent, etc.)	Amount of Monthly Support Your Provide

10. Do you have any debts or financial obligations? ☐ Yes (describe below) ☒ No

Signature

Printed Name

Date


Adam Davis

1-17-23